

**1. DEFINITIONS**

**"CB"**: Campbell Brothers Limited (SC123529).

**"CB Special Terms"**: Special terms agreed by CB on CB's standard special terms proforma.

**"Contract"**: the contract between the Supplier and CB for the sale and purchase of Goods.

**"Mandatory Policies"**: CB's policies and codes as amended from time to time.

**"Supplier"**: the seller of Goods.

**"Goods"**: the product(s) set out in the order.

**"TOP"**: these Terms of Purchase.

**1.1 "Writing" & "written"** includes emails.

**1.2** Headings shall not affect interpretation.

**2. BASIS OF CONTRACT**

**2.1** These TOP apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

**2.2** The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these TOP.

**2.3** The order constitutes an offer by CB to purchase the Goods in accordance with these TOP.

**2.4** The order shall be deemed to be accepted on the earlier of the Supplier issuing a written acceptance of the order or the Supplier doing any act consistent with fulfilling the order, at which point the Contract shall come into existence unless agreed otherwise in writing in advance in the CB Special Terms.

**2.5** CB may vary or cancel an order (in whole or in part) at any time before Goods are despatched for delivery without further liability to the Supplier to reflect CB's changing customer needs.

**3. THE GOODS**

**3.1** The Supplier shall ensure that the Goods: (a) correspond with their description and any specification agreed by the parties;

(b) are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by CB expressly or by implication, and in this respect, CB relies on the Supplier's skill and judgement;

(c) are free from defects in design, material and workmanship;

(d) have a reasonable shelf-life equivalent to or better than those of a reasonably prudent supplier of the same type of Goods; and

(e) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

**3.2** CB may inspect and test the Goods at any time before delivery but the Supplier shall remain fully responsible for them and this shall not diminish the Supplier's obligations under the Contract in any way. If CB considers that the Goods do not or are unlikely to comply with the Supplier's undertakings at clause 3.1, CB shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

**4. COMPLIANCE**

**4.1** The Supplier shall ensure that at all times it has all licences, permissions, consents, permits and authorisations that it needs to carry out its obligations under the Contract.

**4.2** In performing its obligations under the Contract, the Supplier shall comply with all applicable laws, statutes, regulations and codes from time to time in force and comply with the Mandatory Policies.

**4.3** CB may terminate the Contract immediately upon notifying the Supplier in writing for any breach of this clause 4.

**5. DELIVERY**

**5.1** The Supplier shall ensure that:

(a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

(b) each delivery of Goods is accompanied by a delivery note which must include the date of the order, order number, type and quantity of Goods including any code number, any special storage instructions and if the Goods are being delivered in instalments, the outstanding balance of Goods remaining to be delivered;

(c) it obtains proof of delivery by ensuring CB's consignee acknowledges receipt of the Goods and signs the delivery note.

(d) if the Supplier requires CB to return any packaging materials or equipment to the Supplier, that fact is clearly stated on the delivery note and any such returns shall be at the Supplier's cost.

**5.2** The Supplier shall deliver the Goods:

(a) on a date agreed with CB or if no date is agreed on the next day (excluding Sundays) ("**Delivery Date**");

(b) to an address specified by CB ("**Delivery Location**")"; and

(c) during CB's normal business hours, or as instructed by CB.

**5.3** Delivery of the Goods shall be completed on completion of unloading the Goods at the Delivery Location.

**5.4** The Supplier shall not deliver the Goods in instalments without CB's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all, or any defect in an instalment shall entitle CB to the remedies set out in clause 6.

**6. REMEDIES**

**6.1** If the Goods are not delivered on the Delivery Date, or do not comply with the undertakings set out in clause 3.1, then, CB may, whether or not it has accepted the Goods:

(a) terminate the Contract;

(b) reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;

(c) require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);

(d) refuse to accept any subsequent delivery of Goods attempted by the Supplier; and / or

(e) recover from the Supplier any additional costs incurred by CB in obtaining substitute goods from a third party.

**6.2** Nothing shall prevent CB from seeking to claim damages for any costs, loss or expenses incurred by CB which are attributable to the Supplier's failure to carry out its obligations under the Contract.

**6.3** These TOP shall apply to any repaired or replacement Goods supplied by the Supplier.

**6.4** CB's rights and remedies under these TOP are in addition to its rights and remedies implied by statute or common law.

**7. TITLE AND RISK**

Title and risk in the Goods shall pass to CB on completion of delivery to enable CB to sell the Goods in the ordinary course of business.

**8. PRICE AND PAYMENT**

**8.1** The price of the Goods shall be the price set out in the order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence.

**8.2** Unless agreed otherwise in writing in advance, the price of the Goods:

(a) includes the costs of packaging, insurance and carriage of the Goods and all taxes, charges, levies, assessments and other fees of any kind imposed on the purchase, export and import of the Goods; and

(b) excludes amounts in respect of value added tax ("**VAT**"), which CB shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice.

**8.3** No extra charges shall apply unless they have been agreed in writing in advance with CB.

**8.4** The Supplier may invoice CB for price of the Goods plus VAT at the prevailing rate (if applicable) on or at any time after the completion of delivery. The Supplier shall ensure that the invoice includes the date of the order, the invoice number, the Supplier's VAT registration number and any supporting documents that CB may reasonably require.

**8.5** CB shall pay correctly rendered invoices within 30 days following the end of the month in which any such invoice is received. Payment shall be made to the bank account nominated in writing by the Supplier.

**8.6** If a party fails to make any payment due to the other under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 3% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. This clause 8.6 shall not apply to payments the defaulting party disputes in good faith.

**8.7** CB may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to CB against any liability of CB to the Supplier.

**9. CB MATERIALS**

The Supplier acknowledges that all materials, equipment, tools, drawings, specifications and data supplied by CB to the Supplier and all rights in them are and shall remain the exclusive property of CB. The Supplier shall not dispose or use them other than in

accordance with CB's authorisation.

**10. TERMINATION**

**10.1** Without limiting its other rights or remedies, CB may terminate the Contract with immediate effect by giving written notice to the Supplier if:

(a) the Supplier commits a material breach of any term of the Contract and fails to remedy that breach (if remediable) within 3 days of being notified in writing to do so;

(b) the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors, being wound up (whether voluntarily or by order of the court), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the Supplier takes any step or action in connection with being made bankrupt, entering any composition or arrangement with creditors, having a receiver appointed to any assets, or ceasing to carry on business or if any step or action is taken in respect of any analogous procedure in another jurisdiction;

(d) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;

(e) the Supplier's financial position deteriorates to such an extent that in CB's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

(f) CB considers it appropriate for any reason.

**10.2** Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

**10.3** Clauses that expressly or by implication survive termination of the Contract shall continue in full force and effect.

**11. LIMITATION OF LIABILITY**

**11.1** Nothing in these TOP shall limit or exclude CB's liability to any extent not permitted by law.

**11.2** Subject to clause 11.1, CB shall under no circumstances be liable to the Supplier, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, for any economic loss of any kind including, but not limited to, loss of use, profits, anticipated savings, business, contracts, goodwill or any special, indirect or consequential loss arising out of or in connection with the Contract.

**11.3** Subject to clause 11.1, CB's total liability to the Supplier in respect of all other losses arising under or in connection with the Contract, howsoever arising, shall in no circumstances exceed the price of the Goods.

**11.4** The provisions of this clause 11 shall survive termination or expiry of the Contract.

**12. INSURANCE**

**12.1** During the term of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance (where required), product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract.

**12.2** The Supplier shall on CB's request, produce the insurance certificate giving details of cover obtained.

**13. INDEMNITY**

**13.1** The Supplier shall keep CB indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) suffered or incurred by CB as a result of or in connection with:

(a) any claim made against CB for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

(b) any claim made against CB by a third party for death, personal injury or damage to property arising out of or in connection with defects in the Goods, save to the extent that such defects are attributable to the acts or omissions of CB; and

(c) any claim made against CB by a third party arising out of or in connection with the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

**13.2** The provisions of this clause 13 shall survive termination or expiry of the Contract.

**14. CONFIDENTIALITY**

No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by this clause 14. Each party may disclose the other party's confidential information:

**14.1** to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14; and

**14.2** as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**15. FORCE MAJEURE**

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from an event, circumstance or cause beyond its reasonable control. If the period of delay or non-performance by the Supplier continues for a period of 1 week, CB may terminate the Contract immediately upon giving written notice to the Supplier.

**16. ASSIGNMENT AND OTHER DEALINGS**

**16.1** CB may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

**16.2** The Supplier may not assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of CB.

**17. VARIATION**

No variation of these TOP shall be effective unless it is in writing and signed by a CB Director.

**18. WAIVER**

No failure or delay by CB to exercise any right or remedy shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. If CB does waive a default by the Supplier, CB shall only do so in writing, and that shall not mean that CB will automatically waive any later default by the Supplier. No single or partial exercise of such right or remedy by CB shall prevent or restrict the further exercise of that or any other right or remedy.

**19. SEVERANCE**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 19 shall not affect the validity and enforceability of the rest of the Contract.

**20. THIRD PARTY RIGHTS**

No one other than a party to the Contract shall have any right to enforce any of its terms.

**21. ENTIRE AGREEMENT**

The order(s), order confirmation(s), these TOP, the CB Special Terms (if any) and the delivery note(s) constitute the entire Contract between the parties and supersede and extinguish all previous agreements, representations, assurances, warranties, promises and understandings between them, whether written or oral, relating to its subject matter.

**22. GOVERNING LAW & JURISDICTION**

**22.1** The Contract, and any dispute or claims (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the laws of Scotland.

**22.2** Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.